

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 24763 )

NORTH BAY VINEYARDS,  
A LIMITED PARTNERSHIP )

Applicant )

UNITED VINTNERS, ET AL. )

Protestants )

Decision: 1538

Source: Russian River

County: Mendocino

DECISION APPROVING APPLICATION 24763

BY THE BOARD:

North Bay Vineyards having filed Application 24763 for a permit to appropriate unappropriated water; protests having been received; a public hearing having been held before the State Water Resources Control Board on May 24, 1978; the applicant having appeared and presented evidence; the evidence received at the hearing having been duly considered; the Board finds as follows:

Substance of the Application

1. Application 24763 is for 0.37 cubic foot per second (cfs) by direct diversion from June 1 to August 31 for irrigation, 15.3 cfs from March 15 to June 1 and September 15 to October 31 for frost protection, and 7.5 cfs from June 1 to August 1 for heat protection all for use on 125 acres. The source is the Russian River, and the proposed point of diversion is within the SW $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 7, T13N, R11W, MDB&M.

Applicant's Project

2. The applicant holds licensed Application 16557 which allows a maximum of 354 acre-feet per annum (afa) from the Russian River underflow for irrigation from April 1 to September 30 on the same acreage specified in Application 24763. The total quantity of water sought by the applicant under Application 24763 and

1538

the license is 313 afa. In effect, this reduces the amount under the license by 41 afa. At the hearing on this matter the applicant agreed that the amount authorized for diversion under the license should be reduced by 41 acre-feet. This reduction will be achieved through better efficiency of the irrigation system. Application 24763 was filed for a longer diversion season than allowed under the license and for different uses.

### Protests

3. The California Department of Fish and Game (Fish and Game), Raymond and Edna Hansen, and United Vintners, dba Italian Swiss Colony, filed protests against Application 24763. Fish and Game withdrew its protest provided specific permit terms are included in the permit to protect the fishery.

4. Protestants Hansen hold licensed Application 21516, and use about 70 afa from March 1 to June 1, and from October 1 to November 30, for irrigation and about 150 afa for frost protection. They are located about three miles downstream. They claim that insufficient water is available in the Russian River to support Application 24763. They claim that Board Decision 1333, which denied Hansen's petition to change the place of use, made that finding. They state further, that they were informed and believe that from March 15 to June 1 insufficient water is available to sustain the 15.3 cfs requested for frost protection if all pending applications, permits, and licenses divert water at the maximum authorized rates. However, Board Decision 1333 does not establish that water is unavailable in the Russian River. It denied Hansen's petition for change in place of use solely because the 25 acre parcel which they petitioned to add to the place of use had not been continuously irrigated since January 28, 1949. The use of water from the Russian River on this parcel would

not be in accord with Condition 8 of Board Decision 1030 and would cause legal injury to Sonoma County Flood Control and Water Conservation District. Hansen's agent reviewed the Board's files and past decisions on the Russian River, and the Hansens officially withdrew their protest against Application 24763 on June 21, 1978.

5. Protestant United Vintners, Inc., claims a right to water from the Russian River under licensed Application 13945 and riparian right reported in Statement of Diversion and Use S8430. This protestant elected not to appear at the hearing, but requested that a letter stating the company's position be made part of the hearing record. United Vintners questioned the availability of unappropriated water in the Russian River to satisfy the peak instantaneous demands during the frost control season.

#### Availability of Unappropriated Water

6. Board Decision 1030 which approved the applications for the Coyote Reservoir Project contains the following term:

"These permits are subject to rights acquired or to be acquired pursuant to applications by others whether heretofore or hereafter filed for use of water within the service area of Mendocino County Russian River Flood Control and Water Conservation Improvement District and within the Russian River Valley in Sonoma County, as said Valley is defined in Decision D 1030 of the State Water Rights Board at page 9, to the extent that water has been beneficially used continuously on the place of use described in said applications since prior to January 28, 1949 (the date of filing Applications 12919 and 12920)."

This term was affirmed by Board Order WR 74-30 adopted October 17, 1974. The applicant's place of use is within the service area of Mendocino County Russian River Flood Control and Water Conservation Improvement District and has beneficially used water continuously since prior to January 28, 1949. Application 24763 therefore has a priority senior to the permits for the Coyote Reservoir Project. Decision D 1030 determined that unappropriated water was available throughout most years in sufficient amounts to satisfy direct diversion of 212 cfs specified in the Coyote Reservoir Project applications.

7. Protestant United Vintners doubts the availability or existence of unappropriated water, especially in light of the quantities which can be instantaneously demanded during the frost control seasons. However, the Board's records do not indicate that such a shortage has ever occurred. Many of the Russian River diversion systems are offset wells located considerable distances from the river. The effects of these diversions on surface flow in the river are reduced in magnitude and delayed in time. Flow in the river during the spring frost season is normally far in excess of demands.

8. The intended use is beneficial.

#### Environmental Considerations

9. This Board decision authorizes a diversion to supplement irrigation use under an existing license and to add frost and heat protection. The net effect of diversion under both filings will be a reduction in the annual use. The project is not located in a particularly sensitive environment and will result in only minor alterations in the condition of land, water and vegetation, and will not result in significant cumulative impacts. The project is thereby exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) in accordance with Section 15104, Chapter 3, Title 14, California Administrative Code.

Conclusions

10. From the foregoing findings, the Board concludes that Application 24763 should be approved and that a permit should be issued to the applicant subject to the conditions in the order following.

ORDER

IT IS HEREBY ORDERED that Application 24763 be approved and that a permit be issued to the applicant subject to vested rights. The permit shall contain all applicable standard permit terms (6, 10, 11, 12, and 13)\* in addition to the following conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed:

(a) 0.37 cubic foot per second by direct diversion from June 1 to August 31 of each year for irrigation.

(b) 15.3 cubic feet per second by direct diversion from March 15 to June 1 and September 15 to October 31 of each year for frost protection.

(c) 7.5 cubic feet per second by direct diversion from June 1 to August 31 of each year for heat protection.

The maximum amount diverted under this permit for all uses shall not exceed 256 acre-feet per year.

2. The total quantity of water diverted under this permit, together with that diverted under Licensed Application 16557 shall not exceed 313 acre-feet per annum.

3. Complete application of the water to the proposed use shall be made on or before December 1, 1983.

\* The Board maintains a list of standard permit terms. Copies of these are available upon request.

4. The State Water Resources Control Board reserves jurisdiction over this permit to impose any appropriate conditions at some future date to conform the permit to Board policy on use of water for frost protection. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.

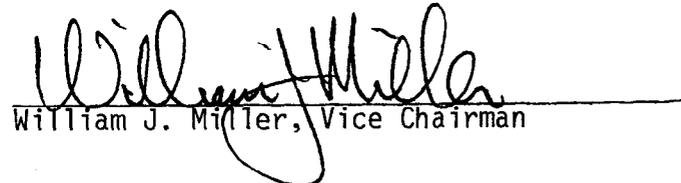
5. In accordance with Section 1603 and/or Section 6100 of the Fish and Game Code, no water shall be diverted under this permit until the Department of Fish and Game has determined that measures necessary to protect fishlife have been incorporated into the plans and construction of such diversion. The construction, operation, or maintenance costs of any facility required pursuant to this provision shall be borne by the permittee.

6. For the protection and preservation of fishlife and the maintenance of water related recreational uses, permittee shall divert only when the flow in the Russian River exceeds 150 cubic feet per second and only at a rate not exceeding said excess, ceasing all diversion when the flow in the river is 150 cubic feet per second or less. River flows shall be measured at the nearest U. S. Geological Survey gaging station on the river.

IT IS FURTHER ORDERED that the maximum amount of water authorized for diversion under License 9430 issued on Application 16557 is hereby reduced from 354 acre-feet per year to 313 acre-feet per year.

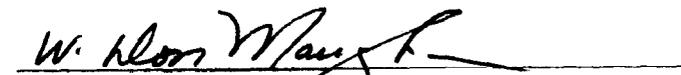
Dated: SEP 20 1979

  
Carla M. Bard, Chairwoman

  
William J. Miller, Vice Chairman

**ABSENT**

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L. L. Mitchell, Member

  
W. Don Maughan, Member

